IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O. NO. 465 OF 2006

Smt. Kusum Mangalaprasad Singh @ Sharma ... Appellant
VS.
Janardhan alias Bachha Mangalaprasad Singh ... Respondent

Ms. Asher Pattan for Mr. A. M. Saraogi for appellant.
Mr. G. R. Bhatt with Lata G. Wadhwani for the respondent.

CORAM: D. G. KARNIK **J.**

DATE: 12th September, 2006

P.C.:

1. Heard learned counsel for the parties.

2. This appeal is directed against the order dated 23rd March 2006 passed by the City Civil Court, Mumbai rejecting the appellant's Notice of Motion No. 4207 of 2005.

3. Respondent is a son of the appellant. His mother, the appellant filed a suit against the respondent in the City Civil Court alleging that she is a tenant of the suit premises since 1968. She claimed an injunction restraining the respondent from entering into the suit premises alleging that the relationship between the parties were strained. The respondent resisted the suit and the motion stating that the

suit premises were taken on lease by his father i.e. the husband of the appellant. He was residing in the suit premises as a member of the family when the father died in June 1996 and he therefore had a right to stay in the suit premises.

4. The trial court disbelieved the case of the appellant that she was the tenant in respect of the suit premises since beginning of the tenancy. The explanation that all rent receipts prior to 1996 ie., prior to the death of the husband of the appellant , were misplaced was not accepted by the trial court. The trial court was of the view that if the rent receipts were misplaced the appellant could have produced a certificate, a letter or an affidavit of the landlord disclosing that she was the tenant since beginning of the tenancy. The appellant had not shown any independent source of income to have acquired the tenancy and having paid the rent from her income at any time.

5. The prima facie finding recorded by the trial court that the appellant had not shown that she was a tenant since beginning but that the premises were taken on lease by her i.e., the father of the respondent is a finding of fact which is possible and on the basis of the evidence on record at the stage of motion. In my view at this stage there is nothing on record to hold that the prima facie finding is erroneous.

6. Regarding balance of convenience as the appellant had not produced any evidence to show that the respondent had acquired any other suitable premises. In the circumstances I see no error in the judgment of the trial court. The appeal is therefore dismissed. However, hearing of the suit is expedited. Trial court is directed to decide the suit expeditiously and in any event within 2 years.

7. Considering the relationship between the parties the trial court is free to exercise powers under section 89 of the Civil Procedure Code.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 568 of 2006
in
A.O. NO. 465 OF 2006

Smt. Kusum Mangalaprasad Singh @ Sharma ... Appellant
VS.
Janardhan alias Bachha Mangalaprasad Singh ... Respondent

Ms. Asher Pattan for Mr. A. M. Saraogi for appellant.
Mr. G. R. Bhatt with Lata G. Wadhwani for the respondent.

CORAM: D. G. KARNIK **J.**

DATE: 12th September 2006

P.C.:

In view of the disposal of the appeal this Civil application does not survive and is disposed of.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 670 of 2006
in
A.O. NO. 465 OF 2006

Smt. Kusum Mangalaprasad Singh @ Sharma ... Appellant
VS.
Janardhan alias Bachha Mangalaprasad Singh ... Respondent

Ms. Asher Pattan for Mr. A. M. Saraogi for appellant.
Mr. G. R. Bhatt with Lata G. Wadhwani for the respondent.

CORAM: D. G. KARNIK **J.**

DATE: 12th September 2006

P.C.:

In view of the disposal of the appeal this Civil application does not survive and is disposed of.

(D.G. KARNIK J.)